

Lessors that have paid taxes in another state with respect to acquisition of the tangible personal property leased for use in Illinois, would be exempt from Use Tax only *to the extent of the amount of such tax properly due and paid in such other state*. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310. (This is a GIL.)

December 17, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 24, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter respectfully requests a Private Letter Ruling in the matter of Sales and Use Tax. Recently, ABC received a call from Illinois' Sales Tax Division stating that ABC's Sales and Use Tax Return would be corrected by eliminating the sales tax and charging only use tax. However, upon further review of Illinois sales tax regulations, we determined that the State of Illinois does not impose any sales or use tax on rental receipts.

ABC purchases its rental computer equipment (no equipment is titled or licensed) from various states, and pays the appropriate sales tax on those purchases (not less than 6.25%). ABC's primary source of income in Illinois is rental income, with minimal income resulting from conditional sales. In our opinion, ABC should be remitting only 6.25% use tax on lease income received on conditional sales, and no sales or use tax should be collected on rental income.

We inquired of the Customer Service Division about ABC's responsibility for paying sales and use tax. They concurred in an email by stating, 'Illinois taxes leases of tangible personal property differently than the majority of other states. For Illinois Sales Tax purposes, there are two types of leasing situations: A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a

fair market value buy out option in order to maintain the character of a true lease. Lessors of tangible personal property under true leases are deemed to be the end users of the tangible personal property and incur a use tax liability on their cost price of such property. Lessees incur no tax liability under true leases.'

Please provide an opinion on ABC's responsibility for collecting and remitting sales taxes on lease income. Your prompt attention will allow us to not only correct our tax returns due in future periods, but will also allow us to provide our Illinois customers with better service. Please feel free to contact XXX with any questions or concerns.

## **DEPARTMENT'S RESPONSE:**

The information you received regarding true leases is correct, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, your company, as lessor of the property being used in Illinois, would incur Use Tax obligations on the cost price of the leased property. As a lessor, you must either pay your supplier, if your supplier is registered to collect Illinois Use Tax, or self-assess and remit the tax directly to the Department. If, as a lessor, you have already paid taxes in another state with respect to the acquisition of the tangible personal property, then you would be exempt from Illinois Use Tax only *to the extent of the amount of such tax properly due and paid in such other state*. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. There are also some limited exceptions to the general rule described in the preceding paragraphs for purchases of tangible personal property leased to governmental entities and exempt hospitals. See 86 Ill. Adm. Code 130.2011 and 130.2012.

For general information related to conditional sales, please refer to 86 Ill. Adm. Code 130.2010. Retailers' Occupation Tax and local occupation taxes would be incurred on all the gross receipts from conditional sales. Local occupation taxes are imposed upon retailers when they accept

purchase orders in a jurisdiction imposing a local tax, or (in cases where the purchase order is accepted outside Illinois) when the property that is sold is in an inventory in a jurisdiction imposing the local tax at the time of sale. See for example 86 Ill. Adm. Code 270.115.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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